

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SOUTH AUSTIN PHARMACY, LLC §
Plaintiff, §

v. §

PHARMACISTS MUTUAL §
INSURANCE COMPANY §
Defendant. §

Civil Action No. 1:15-cv-271

DEFENDANT'S NOTICE OF REMOVAL

To the Honorable United States District Judge:

COMES NOW, PHARMACISTS MUTUAL INSURANCE COMPANY ("PMIC"), the only named defendant in the above-styled and numbered cause, and without waiving any of its defenses, hereby gives notice of removal of this case pursuant to 28 U.S.C. § 1332, 1441(a), and 1446(a), for removal of an action filed against PMIC in the 53rd Judicial District Court of Travis County, Texas, to the United States District Court for the Western District of Texas, Austin Division. In support of this removal, PMIC would respectfully show this Court the following:

I. Background

1. On February 20, 2015, Plaintiff filed this action in the 53rd Judicial District Court of Travis County, Texas.
2. Plaintiff is South Austin Pharmacy, LLC.
3. Defendant is Pharmacists Mutual Insurance Company ("PMIC").

4. PMIC is the only named defendant.
5. Plaintiff's Original Petition alleges claims against Defendant for damages caused by Defendant's alleged breach of contract, noncompliance with the Texas Insurance Code, and breach of common law duty of good faith and fair dealing in an insurance coverage dispute. *See* Exhibit A.
6. Plaintiff demands a trial by jury.

II. Removal is Timely

7. PMIC was served with a copy of Plaintiffs' Original Petition on March 10, 2015.
8. PMIC now timely files this Notice of Removal within 30 days after service and receipt of Plaintiff's Original Petition, pursuant to 28 U.S.C. §1446(b).
9. This case is being removed within one year of commencement of the action, as required under 28 U.S.C. §1446(c).

III. Grounds for Removal

A. Amount in Controversy Exceeds \$75,000

10. The Original Petition filed by Plaintiff "seeks monetary relief over \$1,000,000 and demands judgment for all other relief to which Plaintiff deems itself entitled." *See* Exhibit A, ¶ 47.

11. Based upon the above, the amount in controversy between Plaintiff and Defendant in this lawsuit exceeds the sum or value of \$75,000.00, exclusive of interest and costs, as required under section 1332(a).

B. Complete Diversity of Citizenship between Plaintiff and PMIC

12. Plaintiff is a citizen of Texas.
13. Plaintiff's Original Petition states that Plaintiff is a Texas limited liability company with a principal place of business in Travis County, Texas, and owns the

community pharmacy, subject to the lawsuit, located at 4203A James Casey Street in Austin, Texas. *See* Exhibit A, ¶¶ 2 and 8.

14. Defendant is a citizen of Iowa.

15. Defendant PMIC is an Iowa Corporation, with its principal place of business located at 808 US Highway 18 West, Algona, Iowa. *See* 28 U.S.C. §1332(c)(1) (instructing “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”).

16. Based upon the above, there is complete diversity of citizenship between all parties to this lawsuit, as they are citizens of different states.

IV. Consent Not Required

17. Defendant PMIC is the only named defendant in this lawsuit, and therefore PMIC is not required to obtain any party’s consent prior to removal. *See* 28 U.S.C. §1446(b)(2)(A).

V. Venue is Proper

18. The Court has original jurisdiction over the claims set forth in the Original Petition pursuant to 28 U.S.C. §1332.

19. Venue is proper in this court under 28 USC §1441(a), because this district and division embrace the place in which the removed state court action has been pending.

20. Specifically, the 53rd Judicial District Court of Travis County Texas, is located in the United States District Court of the Western District of Texas, Austin Division.

VI. PMIC Completed All Procedural Requirements

21. All documents required under the removal statutes—including all process, pleadings, answers, and orders served upon Defendant and/or on file with the state

court, pursuant to 28 U.S.C. §1446(a)—and the Local Rules are attached, including the following:

- Exhibit A: Plaintiff's Original Petition;
- Exhibit B: Defendant's Original Answer;
- Exhibit C: State Court Docket Sheet;
- Exhibit D: Copy of the service of process received by Defendant;
- Exhibit E: Brief in Support of Notice of Removal;
- Exhibit F: List of all counsel of record; and
- Exhibit G: Corporate Disclosure Statement, in accordance with Federal Rule of Civil Procedure 7.1.

22. With this Notice of Removal, PMIC is also filing its Corporate Disclosure Statement, as required under Federal Rule of Civil Procedure 7.1. *See* Exhibit G.

23. On filing of this Notice of Removal, PMIC will promptly provide written notice to Plaintiff and file a copy of this Notice of Removal with the clerk of the state court where the suit has been pending, in accordance with 28 U.S.C. § 1446(d).


24. In the event this Court subsequently identifies a defect in this Notice of Removal, PMIC respectfully requests this Court to grant PMIC leave to amend this Notice and cure the defect. *See, e.g., Sutton v. Advanced Aquaculture Sys., Inc.*, No. 07-CV-175-XR, 2007 WL 1032339, at *1 (W.D. Tex. April 3, 2007) (explaining “Defendants may still amend their notice of removal after the expiration of the original 30-day time limit for removal.”); *Lafayette City-Parish Consol. Government v. Chain Elec. Co.*, No. 11-1247, 2011 WL 4499589, *7 (W.D. La. Sept. 23, 2011) (explaining “defendants may freely amend the notice of removal required by section 1446(b).”).

VII. Conclusion

WHEREFORE, Defendant Pharmacists Mutual Insurance Company represents that it has complied with the removal statutes set forth above, and thus, hereby notifies this Court of the removal of this action from the 53rd Judicial District Court of Travis County, Texas, to the United States District Court for the Western District of Texas, Austin Division.

Respectfully submitted,

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**COUNSEL FOR PHARMACISTS
MUTUAL INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2015 a true and correct copy of the foregoing document has been served on counsel of record in accordance with the Federal Rules of Civil Procedure.

Via Certified U.S. Mail RRR

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